PROTECTION OF THE FAMILY - PARENTAL RIGHTS AND RESPONSIBILITIES

IV. JURISPRUDENCE

ICCPR

- *Ben Said v. Norway* (767/1997), ICCPR, A/55/40 vol. II (29 March 2000) 161 at paras. 11.2 and 11.3.

...

11.2 It has been confirmed by the author and the State party that the author appeared, on 12 January 1997 at the airport of Oslo, intending to participate in a court hearing at the Oslo City Court in a child custody and visiting rights case, scheduled for 14 January, to which he had received a convocation. It is likewise undisputed that the author was prevented by the administrative authorities of the State party from attending the hearing or from directly contacting the judge. He was, however, able to meet with his lawyer who participated in the hearing held on 14 January while the author had already been deported from Norway.

11.3 The right to a fair trial in a suit at law, guaranteed under article 14, paragraph 1, may require that an individual be able to participate in person in court proceedings. In such circumstances the State party is under an obligation to allow that individual to be present at the hearing, even if the person is a non-resident alien. In assessing whether the requirements of article 14, paragraph 1, were met in the present case, the Committee notes that the author's lawyer did not request a postponement of the hearing for the purpose of enabling the author to participate in person; nor did instructions to that effect appear in the signed authorisation given to the lawyer by the author at the airport and subsequently presented by the lawyer to the judge at the hearing of the child custody case. In these circumstances, the Committee is of the view that it did not constitute a violation by the State party of article 14, paragraph 1, that the Oslo City Court did not on its own initiative, postpone the hearing in the case until the author could be present in person.

- *Buckle v. New Zealand* (858/1999), ICCPR, A/56/40 vol. II (25 October 2000) 175 at paras. 2.1, 2.2 and 9.1-9.3.

...

2.1 The author's six children (aged at the time between 8 and 1 year of age) were removed from her care in 1994 allegedly because of her inability to look after them adequately.

2.2 In August 1997 the author appealed, to the Court of Appeal, the decision of the New Zealand Family Court that had deprived her of her guardianship rights. On 25 February 1998, the Court of Appeal confirmed the decision of the Family Court. The author's request for

leave to appeal to the Privy Council against the decision of February 1998 was rejected. Notwithstanding this Mrs Buckle travelled to the United Kingdom and secured a hearing in May 1998, before the Judicial Committee of the Privy Council. The application was unsuccessful.

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9.1 Concerning the author's claim under article 17 of the Covenant, the Committee notes the information provided by the State party with respect to the extensive procedures followed in the author's case. The Committee also notes that the situation is under regular review and that the author has been given the opportunity to retain access to her children. In the circumstances, the Committee finds that the interference with the author's family has not been unlawful or arbitrary and is thus not in violation of article 17 of the Covenant.

9.2 The author has also claimed a violation of article 23 of the Covenant. The Committee recognizes the weighty nature of the decision to separate mother and children, but notes that the information before it shows that the State party's authorities and the Courts considered carefully all the material presented to them and acted with the best interests of the children in mind and that nothing indicates that they violated their duty under article 23 to protect the family.

9.3 With respect to the alleged violation of article 24 of the Covenant, the Committee is of the opinion that the author's arguments and the information before it do not raise issues that would be separate from the above findings.

- *Patera v. Czech Republic* (946/2000), ICCPR, A./57/40 vol. II (25 July 2002) 294 (CCPR/C/75/D/946/2000) at paras. 2.2-2.6, 7.2-7.4 and 8.

...

2.2 In a preliminary court decision from the Regional Court Prague West of 12 July 1993, confirmed in a further preliminary court decision of 2 October 1995, the author was granted the right to see his son every second weekend from Saturday morning until Sunday evening. However, Ms. R.P. did not comply with the decisions and has refused the author regular access ever since. Only during 1994 and 1995 was the author allowed to see his son on an irregular basis, but then under the surveillance of a family member of Ms. R.P. or armed security officers. Ms. R.P. has been repeatedly fined for her refusal to comply with the courts' decisions.

2.3 In 1994, the author initiated criminal proceedings against her for not complying with the said court decisions, in accordance with the Criminal Code No. 140/1961 Coll., paragraph 171, section 3. The case was dealt with by the Court of Okresní soud Ústí nad Labem, and

had at the time of the author's submission to the Committee on 9 February 2002, not yet been decided.

2.4 Subsequently, the author brought new criminal charges against Ms. R.P. for not complying with further preliminary decisions granting the author access to his son from December 1997 to August 1998. The case was held over for two years, from 11 January 1999 until 14 February 2001, when eventually the judge withdrew from the case. The new judge dismissed the charges against Ms. R.P. (2) However, the author alleges that this decision was not delivered to the parties in accordance with law, and it therefore did not enter into force. The author's complaint to the Constitutional Court was dismissed.

2.5 On 18 November 1993, the Kladno Regional Court convicted Ms. R.P. of three criminal acts relating to the child custody case. The decision was appealed, but shortly before the verdict of the Court of Appeal, Ms. R.P. was granted a pardon for two of the criminal acts, whereas the third remained undecided, and eventually became time-barred. On 20 November 1995, the author submitted a constitutional complaint, which was rejected on the ground that the author had not been a party to the criminal case.

2.6 In a statement of 1 June 1992, a court specialist Dr. J.K., and Dr. J.B., explained that the author's wife suffers from a mental disorder in the development of her personality. In another statement by Dr. J.C. and Mr. H.D. of 11 May 1993, it was stated that the author's wife was damaging the interests of their son by not allowing contact between the father and the son. These statements were supported by statements from a court specialist, Mr. V.F., dated 14 May 1995 and 15 April 1997.

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7.2 As to the alleged violation of article 17, the Committee notes the State party's contention that there is no documentation of arbitrary or unlawful interference by the State party with the author's family, that the decisions of courts of all instances have complied with the rules of procedure set by law, and that the delay in the resolution of the divorce and custody proceedings is due to the numerous petitions submitted by the author. However, the current communication is not based only on article 17, paragraph 1, of the Covenant, but also on paragraph 2 of the said provision, according to which everyone has the right to the protection of the law against interference or attacks on one's privacy and family life.

7.3 The Committee considers that article 17 generally includes effective protection to the right of a parent to regular contact with his or her minor children. While there may be exceptional circumstances in which denying contact is required in the interests of the child and cannot be deemed unlawful or arbitrary, in the present case the domestic courts of the State party have ruled that such contact should be maintained. Consequently, the issue before the Committee is whether the State party has afforded effective protection to the author's

right to meet his son in accordance with the court decisions of the State party.

7.4 Although the courts repeatedly fined the author's wife for failure to respect their preliminary orders regulating the author's access to his son, these fines were neither fully enforced nor replaced with other measures aimed at ensuring the author's rights. In these circumstances and taking into account the considerable delays at various stages of the proceedings, the Committee takes the view that the author's rights under article 17 of the Covenant, in conjunction with article 2, paragraphs 1 and 2 of the Covenant, did not receive effective protection. Consequently, the Committee is of the view that the facts before it disclose a violation of article 17, in conjunction with article 2 of the Covenant.

8. In accordance with article 2, paragraph 3 (a), of the Covenant, the State party is under an obligation to provide the author with an effective remedy, which should include measures to ensure prompt implementation of the court's orders regarding contact between the author and his son. The State party is also under an obligation to prevent similar violations in the future.

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Notes

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2/ This point of the submission is unclear.

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For dissenting opinion in this context, see Patera v. Czech Republic (946/2000), ICCPR, (25 July 2002) 294 (CCPR/C/75/D/946/2000) at Individual Opinion by Mr. Nisuke Ando and Mr. Prafullachandra Natwarlal Bhagwati, 302.

- *Van Grinsven v. The Netherlands* (1142/2002), ICCPR, A/58/40 vol. II (27 March 2003) 603 (CCPR/C/77/D/1142/2002) at paras. 2.1-2.3 and 5.6.

...

2.1 According to the author, in June 1998 the author's wife attempted to kill their two children. Subsequently, the children remained in the sole custody of the author, and his wife was made to follow psychiatric treatment. The author filed for divorce in December 1998.

2.2 In July 1999, the court (Rechtbank) in 's-Hertogenbosch awarded joint custody to the parents, but decided that the children should live with their mother. However, when the mother came to pick up the children from the author's house in August, the author killed her. The author claims that he killed his wife in order to protect his children from their mother. On 12 September 2001, on appeal the Court (Gerechtshof 's-Hertogenbosch) convicted the

author of the murder of his wife. He was sentenced to 6 years' imprisonment.

2.3 On 13 March 2000, the first instance court (Rechtbank 's-Hertogenbosch) decided to withdraw child custody from the father and the author's application for visits and telephone contact with his children was denied. On 12 July 2000, the Court of Appeal (Gerechtshof 's-Hertogenbosch) ordered further examination of the children's situation and needs. Subsequently, in its decision of 2 January 2002, the Court of Appeal confirmed the lower court's decision that it is in the interest of the children not to visit or to have telephone contact with their father. On 12 February 2002, the author's lawyer provided him with detailed advice on why an appeal in cassation would have no chance of success. He explained that since the author's complaint was based only on the court's evaluation of facts and evidence, it could not be appealed further.

...

5.6 With regard to the author's claim that he and his children were subjected to mental torture and cruel, inhuman and degrading treatment, the Committee notes that, in the circumstances of the case, the withdrawal of custody rights from the author, the refusal to let him meet and talk to his children, and the censoring of mail to his children, do not fall under the scope of article 7 of the Covenant. Furthermore, the Committee considers that the claim that the author and his children are being held in servitude of the state, in view of the factual circumstances of the case, does not fall within the scope of application of article 8 of the Covenant. Hence, these claims are incompatible with the Covenant and inadmissible under article 3 of the Optional Protocol.

...

- *Petersen v. Germany* (1115/2002), A/59/40 vol. II (1 April 2004) 538 at paras. 2.1-2.5, 6.6-6.8, 6.10 and 7.

...

2.1 The author is the father of a child born out of wedlock on 3 May 1985. He lived with the child's mother, Ms. B., from May 1980 to November 1985. They agreed that the son would bear the mother's surname. After separation from the mother, the author continued to pay maintenance and had regular contact with his son until autumn 1993. In August 1993, the mother married Mr. K., and took her husband's name in conjunction with her own surname, i.e. B.-K.

2.2 In November 1993, the author asked the Youth Office of Bremen whether the mother had applied for a change of his son's surname. By letter of 20 December 1993, he was advised that she had enquired about the possibility, but that no request had been filed yet. In his letter, the competent Youth Office official informed the author that, should such a

request be lodged, he would agree to a change of surname, as the stepfather had been living together with the mother and the son for more than one year and since the child fully accepted him. On 30 December 1993, the mother and her husband recorded statements at the Bremen Registry Office, to the effect that they gave their family name (K.) to the author's son. They also filed a document issued by the Bremen Youth Office, on 29 December 1993, on behalf of the son (then 8 years old), according to which he agreed to the change of his surname. The Bremen Registry Office informed the Helmstedt Registry Office accordingly, following which the registrar of the Helmstedt Registry Office added the change of the child's surname to his birth record.

2.3 On 6 April 1994, the author filed an action with the Administrative Court of Bremen against the Bremen Municipality, complaining that the Bremen Youth Office had failed to hear him about the envisaged change of his son's surname. On 19 May 1994, the Administrative Court of Bremen declared itself incompetent to deal with the action and transferred the case to the District Court of Braunschweig.

2.4 On 21 October 1994, the Braunschweig District Court dismissed the author's claim for rectification of his son's birth record, insofar as the change of his surname was concerned. The Court found that the entry was correct because the child's surname had been changed in accordance with s. 1618 2/ of the Civil Code. It considered that this section did not amount to a violation of the non-discrimination provision of the German Constitution or of article 8 of the European Convention on Human Rights. On balance, s. 1618 of the Civil Code did not affect the equality between children born out of wedlock and children born in wedlock. Rather, in providing for the possibility of having the same surname, s. 1618 ensured that the child's status - born out of wedlock - was not disclosed to the public. As far as procedural matters were concerned, the proceedings for a change of surname in which the natural father did not participate could not be objected to on constitutional grounds. In particular, there was no breach of the author's rights as a natural parent, since his son had never borne the father's surname. The change of surname served the best interests of the child. A right of the natural father to be heard in the proceedings, as argued by the author, without the possibility to block a change of surname would not be effective, as mother and stepfather would have the final say in any event.

2.5 On 4 January 1995, the Regional Court of Braunschweig dismissed the author's appeal, confirming the reasoning of the District Court and holding that there were no indications that the legal provisions applied in the present case were unconstitutional. The change of surname served the interests of the child's well-being, which prevailed over the interests of the natural father.

...

6.6 To the extent that the author claims, under article 26 of the Covenant, that he was

discriminated against, in comparison with the child's mother or to fathers of children born in wedlock, the Committee notes that the European Court declared similar claims by the author inadmissible *ratione materiae*, since there was no room for the application of article 14 of the European Convention, as his right to respect to family life was not affected by the decisions in the change of name as well as the compensation proceedings. The Committee recalls its jurisprudence 17/ that, if the rights invoked before the European Court of Human Rights differ in substance from the corresponding Covenant rights, a matter that has been declared inadmissible *ratione materiae* has not, in the meaning of the respective reservations to article 5, paragraph 2 (a), been considered in such a way that the Committee is precluded from examining it.

6.7 The Committee recalls that the independent right to equality and non-discrimination in article 26 of the Covenant provides greater protection than the accessory right to non-discrimination contained in article 14 of the European Convention. 18/ It notes that, in the absence of any independent claim made under the Convention or its relevant Protocols, the European Court could not have examined whether the author's accessory rights under article 14 of the Convention had been breached. Consequently, the author's claims in relation to article 26 of the Covenant have not been considered by the European Court. It follows that the Committee is not precluded by the State party's reservation to article 5, paragraph 2 (a), of the Optional Protocol from examining this part of the communication.

6.8 The Committee recalls that not every distinction made by the laws of a State party amounts to a discrimination in the sense of article 26 but only those that are not based on objective and reasonable criteria. The author has not substantiated, for purpose of admissibility, that reasons for introducing s. 1618 into the German Civil Code (para. 2.4 above) were not objective and reasonable. Likewise, the author has not substantiated that the denial of compensation for lost travel expenses amounted to a discrimination within the meaning of article 26. Accordingly, this part of the communication is inadmissible under article 2 of the Optional Protocol to the International Covenant on Civil and Political Rights.
...
6.10 Insofar as the author alleges that he has been denied access to the German courts, in violation of article 14 of the Covenant, because, unlike fathers of children born in wedlock, he could not contest the decision to change his son's surname, nor claim compensation for the mother's failure to comply with his right of access to his son, the Committee notes that the author had access to the German courts, in relation to both matters, but that these courts dismissed his claims. It considers that he has not sufficiently substantiated, for purposes of admissibility, that his claims raise issues under article 14, paragraph 1, of the Covenant, which could be raised independently from article 26 and do not relate to matters that have already been "considered", within the meaning of the State party's reservation, by the European Court...

7. The Human Rights Committee therefore decides:

(a) That the communication is inadmissible under articles 2 and 5, paragraph 2 (a), of the Optional Protocol;
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2/ Pursuant to section 1617 of the German Civil Code in force at the material time, a child born out of wedlock received the surname that the mother was bearing at the time of the child's birth. A subsequent change of the mother's surname as a result of marriage did not affect the child's surname.

Section 1618 of the same Code provided that the mother of a child born out of wedlock and her husband could declare, for the record of a registrar, that the child, who was bearing a surname in accordance with section 1617 and was not yet married, should in future bear their family name. Similarly, the father of the child could declare, for the record of a registrar, that the child should bear his surname. The child and the mother had to agree to the change of the surname, in case that the father wanted to give his surname to the child.

...

17/ See e.g. communication No. 441/1990, *Casanovas v. France*, at para. 5.1.

18/ See communication No. 998/2001, *Althammer v. Austria*, at para. 8.4.

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- *Leirvåg v. Norway* (1155/2003), ICCPR, A/60/40 vol. II (3 November 2004) 203 at paras. 2.3, 2.4, 2.8, 2.9, 14.2-14.7, 15 and 16.

...

2.3 In August 1997, the Norwegian government introduced a new mandatory religious subject in the Norwegian school system, entitled "Christian Knowledge and Religious and Ethical Education" (hereafter referred to as CKREE) replacing the previous Christianity subject and the life stance subject. This new subject only provides for exemption from certain limited segments of the teaching. The new Education Act's §2 (4) stipulates that education provided in the CKREE subject shall be based on the schools' Christian object clause 1/ and provide "thorough knowledge of the Bible and Christianity as a cultural heritage and Evangelical-Lutheran Faith". During the preparation of the Act, the Parliament instructed the Ministry to obtain a professional evaluation of the Act's relationship with human rights. This evaluation was carried out by the then Appeals Court judge Erik Møse, who stated that:

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"*As the situation stands, I find that the safest option is a general right of exemption. This will mean that the international inspectorate bodies will not involve themselves with the questions of the doubt raised by compulsory education. However, I cannot state that the partial exemption will be in contravention of the conventions. The premise is that one establishes an arrangement that in practice lies within their (the conventions') frameworks. Much will depend on the further legislative process and the actual implementation of the subject.*"

2.4 The Ministry's circular on the subject states that: "*When pupils request exemption, written notification of this shall be sent to the school. The notification must state the reason for what they experience as the practice of another religion or affiliation to a different life stance in the tutoring.*" A later circular from the Ministry states that demands for exemption on grounds other than those governed by clearly religious activities must be assessed on the basis of strict criteria.

...

2.8 Several organizations representing minorities with different beliefs voiced strong objections to the CKREE subjects. After school started in the autumn of 1997, a number of parents, including the authors, demanded full exemption from relevant instruction. Their applications were rejected by the schools concerned, and on administrative appeal to the Regional Director of Education, on the ground that such exemption was not authorized under the Act.

2.9 On 14 March 1998, the NHA and the parents of eight pupils, including the authors in the present case, instituted proceedings before the Oslo City Court. By judgement of 16 April 1999, the Oslo City Court rejected the authors' claims. On 6 October 2000, upon appeal, the Borgarting Court of Appeal upheld this decision. The decision was confirmed upon further appeal, by the Supreme Court in its judgement of 22 August 2001, thus it is claimed that domestic remedies have been exhausted. Three of the other parents in the national court suit, and the NHA, decided to bring their complaint to the European Court of Human Rights (hereinafter denominated ECHR)).

...

14.2 The main issue before the Committee is whether the compulsory instruction of the CKREE subject in Norwegian schools, with only limited possibility of exemption, violates the authors' right to freedom of thought, conscience and religion under article 18 and more specifically the right of parents to secure the religious and moral education of their children in conformity with their own convictions, pursuant to article 18, paragraph 4. The scope of article 18 covers not only protection of traditional religions, but also philosophies of life, 12/ such as those held by the authors. Instruction in religion and ethics may in the Committee's view be in compliance with article 18, if carried out under the terms expressed in the

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Committee's general comment No. 22 on article 18: "*[A]rticle 18.4 permits public school instruction in subjects such as the general history of religions and ethics if it is given in a neutral and objective way*", and "*public education that includes instruction in a particular religion or belief is inconsistent with article 18, paragraph 4 unless provision is made for non-discriminatory exemptions or alternatives that would accommodate the wishes of parents or guardian*s." The Committee also recalls its Views in *Hartikainen et al. v. Finland*, where it concluded that instruction in a religious context should respect the convictions of parents and guardians who do not believe in any religion. It is within this legal context that the Committee will examine the claim.

14.3 Firstly, the Committee will examine the question of whether or not the instruction of the CKREE subject is imparted in a neutral and objective way. On this issue, the Education Act, section 2-4, stipulates that: "*Teaching on the subject shall not involve preaching. Teachers of Christian Knowledge and Religious and Ethical Education shall take as their point of departure the object clause of the primary and lower secondary school laid down in section 1-2, and present Christianity, other religions and philosophies of life on the basis of their distinctive characteristics. Teaching of the different topics shall be founded on the same educational principles*". In the object clause in question it is prescribed that the object of primary and lower secondary education shall be "in agreement and cooperation with the home, to help to give pupils a Christian and moral upbringing". Some of the *travaux préparatoires* of the Act referred to above make it clear that the subject gives priority to tenets of Christianity over other religions and philosophies of life. In that context, the Standing Committee on Education concluded, in its majority, that: *the tuition was not neutral in value, and that the main emphasis of the subject was instruction on Christianity.* The State party acknowledges that the subject has elements that may be perceived as being of a religious nature, these being the activities exemption from which is granted without the parents having to give reasons. Indeed, at least some of the activities in question involve, on their face, not just education in religious knowledge, but the actual practice of a particular religion... It also transpires from the research results invoked by the authors, and from their personal experience that the subject has elements that are not perceived by them as being imparted in a neutral and objective way. The Committee concludes that the teaching of CKREE cannot be said to meet the requirement of being delivered in a neutral and objective way, unless the system of exemption in fact leads to a situation where the teaching provided to those children and families opting for such exemption will be neutral and objective.

14.4 The second question to be examined thus is whether the partial exemption arrangements and other avenues provide "*for non-discriminatory exemptions or alternatives that would accommodate the wishes of parents or guardians"*. The Committee notes the authors' contention that the partial exemption arrangements do not satisfy their needs, since teaching of the CKREE subject leans too heavily towards religious instruction, and that

partial exemption is impossible to implement in practice. Furthermore, the Committee notes that the Norwegian Education Act provides that "on the basis of written notification from parents, pupils shall be exempted from attending those parts of the teaching at the individual school that they, on the basis of their own religion or philosophy of life, perceive as being the practice of another religion or adherence to another philosophy of life".

14.5 The Committee notes that the existing normative framework related to the teaching of the CKREE subject contains internal tensions or even contradictions. On the one hand, the Constitution and the object clause in the Education Act contain a clear preference for Christianity as compared to the role of other religions and worldviews in the educational system. On the other hand, the specific clause on exemptions in section 2-4 of the Education Act is formulated in a way that in theory appears to give a full right of exemption from any part of the CKREE subject that individual pupils or parents perceive as being the practice of another religion or adherence to another philosophy of life. If this clause could be implemented in a way that addresses the preference reflected in the Constitution and the object clause of the Education Act, this could arguably be considered as complying with article 18 of the Covenant.

14.6 The Committee considers, however, that even in the abstract, the present system of partial exemption imposes a considerable burden on persons in the position of the authors, insofar as it requires them to acquaint themselves with those aspects of the subject which are clearly of a religious nature, as well as with other aspects, with a view to determining which of the other aspects they may feel a need to seek - and justify - exemption from. Nor would it be implausible to expect that such persons would be deterred from exercising that right, insofar as a regime of partial exemption could create problems for children which are different from those that may be present in a total exemption scheme. Indeed as the experience of the authors demonstrates, the system of exemptions does not currently protect the liberty of parents to ensure that the religious and moral education of their children is in conformity with their own convictions. In this respect, the Committee notes that the CKREE subject combines education on religious knowledge with practising a particular religious belief, e.g. learning by heart of prayers, singing religious hymns or attendance at religious services... While it is true that in these cases parents may claim exemption from these activities by ticking a box on a form, the CKREE scheme does not ensure that education of religious knowledge and religious practice are separated in a way that makes the exemption scheme practicable.

14.7 In the Committee's view, the difficulties encountered by the authors, in particular the fact that Maria Jansen and Pia Suzanne Orning had to recite religious texts in the context of a Christmas celebration although they were enrolled in the exemption scheme, as well as the loyalty conflicts experienced by the children, amply illustrate these difficulties. Furthermore,

the requirement to give reasons for exempting children from lessons focusing on imparting religious knowledge and the absence of clear indications as to what kind of reasons would be accepted creates a further obstacle for parents who seek to ensure that their children are not exposed to certain religious ideas. In the Committee's view, the present framework of CKREE, including the current regime of exemptions, as it has been implemented in respect of the authors, constitutes a violation of article 18, paragraph 4, of the Covenant in their respect.

...

15. The Human Rights Committee...is of the view that the facts before it disclose a violation of article 18, paragraph 4, of the Covenant.

16. In accordance with article 2, paragraph 3 (a), of the Covenant, the State party is under an obligation to provide the authors with an effective and appropriate remedy that will respect the right of the authors as parents to ensure and as pupils to receive an education that is in conformity with their own convictions. The State party is under an obligation to avoid similar violations in the future.

Notes

1/ Paragraph 2 (4) of the Education Act reads as follows: "Section 2-4. Teaching the subject CKREE. Exemption from regulations, etc: Teaching in CKREE shall:

- Provide a thorough knowledge of the Bible and Christianity both as cultural heritage and Evangelical-Lutheran faith;
- Provide knowledge of other Christian denominations;
- Provide knowledge of other world religions and philosophies of life, ethical and philosophical topics;
- Promote understanding and respect for Christian and humanist values and;
- Promote understanding, respect and the ability to carry out a dialogue between people with different views concerning beliefs and philosophies of life.

CKREE is an ordinary school subject that shall normally be attended by all pupils. Teaching in the subject shall not involve preaching.

Teachers of CKREE shall take as their point of departure the objects clause of the primary and lower secondary school laid down in section 1-2, and present Christianity, other religions and philosophies of life on the basis of their distinctive characteristics. Teaching of the different topics shall be founded on the same educational principles.

On the basis of written notification from parents, pupils shall be exempted from

attending those parts of the teaching at the individual school that they, on the basis of their own religion or philosophy of life, perceive as being the practice of another religion or adherence to another philosophy of life. This may involve religious activities either in or outside the classroom. In cases where exemption is notified, the school shall, as far as possible and especially in the lower primary school, seek solutions involving differentiated teaching within the curriculum.

Pupils who have reached the age of 15 may themselves give written notification pursuant to the fourth paragraph."

...

12/ General comment No. 22 on article 18, adopted on 30 July 1993.

- *Calvet v. Spain* (1333/2004), ICCPR, A/60/40 vol. II (25 July 2005) 459 at paras. 2.1, 2.2 and 6.4.

...

2.1 The author and his wife concluded an agreement dissolving their marriage, and this was approved by the court in February 1990. Following submission of an application for divorce by the author's ex-wife, court No. 4 in Vilanova i la Geltrú, in a ruling dated 7 March 1992, awarded the mother care and custody of the couple's minor daughter and ordered the author to pay his ex-wife the sum of 25,000 pesetas (150.28 euros) per month in maintenance. On 27 October 1995, the author's ex-wife submitted to examining magistrate No. 6 in Vilanova i la Geltrú a claim for recovery of three monthly payments outstanding from 1993, two from 1994 and all payments from 1995.

2.2 On 14 March 2001, criminal court No. 12 in Barcelona found the author guilty of the offence of abandonment of the family under article 227 of the Spanish Criminal Code and sentenced him to eight weekends' imprisonment and reimbursement of the sums owed to his ex-wife.

...

6.4 With regard to the alleged violation of article 11 of the Covenant by the imposition of a custodial sentence for failure to pay maintenance, the Committee notes that the case concerns a failure to meet not a contractual obligation but a legal obligation, as provided in article 227 of the Spanish Criminal Code. The obligation to pay maintenance is one deriving from Spanish law and not from the separation or divorce agreement signed by the author and his ex-wife. Consequently, the Committee finds the communication incompatible *ratione materiae* with article 11 of the Covenant and thus inadmissible under article 3 of the Optional Protocol.

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